



21 NOV 2000

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I. ZBOROVSKY
6 SCHOOLHOUSE WAY
DIX HILLS, NY 11746

In re Application of :
Yakov I. Levin :
Application No.: 09/308,913 :
PCT No.: PCT/RU96/00364 :
Int. Filing Date: 26 December 1996 : DECISION
Priority Date: 01 November 1996 :
Attorney Docket No.: None :
For: METHOD FOR INFLUENCING THE :
ORGANISM :

This is a decision on applicant's 'Petition to Revive Unintentionally Abandoned Application' filed on 09 August 2000.

BACKGROUND

On 26 December 1996, applicant filed international application No. PCT/RU96/00364 which claimed priority of an earlier Russian application filed 01 November 1995. A copy of the international application had been communicated earlier to the United States Patent and Trademark Office from the International Bureau on 14 May 1998.

On 28 April 1998, a Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 01 June 1999.

On 26 May 1999 applicant filed a transmittal letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter was, *inter alia*, fees for a small entity for the basic national fee and an English translation of the international application.

On 09 July 2000, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that applicant failed to provide the full U.S. basic national fee by the thirty month deadline and thus, the application was abandoned.

On 09 August 2000, applicant filed a petition to revive with the petition fee of \$605 for a small entity. Applicant, in effect, requests the withdrawal of the holding of abandonment.

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be accompanied by (1) a proper reply, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply to the filing of a grantable petition pursuant to this paragraph was unintentional", and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Applicant has submitted the proper reply with the submission of the basic national fee, satisfying item (1). With regard to item (2), applicant has provided the appropriate petition fee. As for item (4), since the application was filed after 08 June 1995, no terminal disclaimer is necessary in this application.

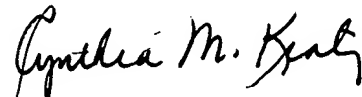
With regard to item (3), applicant's statement that "the late filing of the U.S. application was unintentional and therefore the abandonment of the application was unintentional" has been interpreted as meaning that "entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3) at the time of filing this petition. If this is an incorrect interpretation in view of the rules, petitioner is required to promptly notify this office "[t]he entire delay in filing the 35 U.S.C. 371(c) requirements from their due date until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3).

A review of the application file reveals that the required petition fee of \$605 has been charged to applicant's deposit account and all of the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the National stage in the United States of America.

CONCLUSION

The petition to revive is **GRANTED**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing. The 35 U.S.C. 371(c) and 102(e) date is 26 May 2000. 1999 *cmk*



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Request for Legal Staff Consideration

RECEIVED

Serial No. 09/308913

11 SEP 2000 Date 09 Sept. 2000

Legal Staff

International Division

Request: Legal Applicant sent in a petition to revive
unintentionally abandoned application. Can you look at
it.

Requestor Thanks
Christina Washington Supervisor Cathy Short

Response: Granted

By: @Kinty

Date 21 Nov 00

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